

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN DAVID EVERETT,
Plaintiff,

v.

PIERCE COUNTY, *et al.*,
Defendants.

Case No. C07-5138FDB

**ORDER DISMISSING
FRIVOLOUS COMPLAINT
PURSUANT TO 28 U.S.C. §
1915**

Plaintiff submitted a civil rights claim under 42 U.S.C. § 1983, which was deficient in that it (1) challenged the validity of his underlying conviction or sentence; (2) failed to allege facts showing how the named defendants personally participated in the alleged harmful acts or omissions to act; and (3) named state prosecutors, who are entitled to prosecutorial immunity, as defendants. Plaintiff was given an opportunity to cure the deficiencies, but failed to do so, and the Magistrate Judge recommends dismissal of this matter as frivolous.

In response to the Report and Recommendation, Plaintiff submitted Objections [Dkt. # 9] and a Motion to Amend Complaint [Dkt. # 10]. The proposed amendment fails to correct the deficiencies, as Plaintiff challenges his sentence under a plea agreement.

The Court, having reviewed the Report and Recommendation of Magistrate Judge J. Kelley Arnold, objections to the report and recommendation, and the remaining record, does hereby find and

ORDER:

(1) The Court adopts the Report and Recommendation;

- (2) Plaintiff's complaint is DISMISSED;
- (3) Plaintiff's pending motions are DENIED, as being moot;
- (4) The Clerk is directed to terminate this action pursuant to **28 U.S.C. § 1915(e)** and to count this as a dismissal under **28 U.S.C. § 1915(g)**; and
- (5) The Clerk is directed to send copies of this Order to plaintiff and to the Hon. J. Kelley Arnold.

DATED this 2nd day of July 2007.



FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE